IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

1. W. A. DREW EDMONDSON, in his capacity as ATTORNEY GENERAL OF THE STATE OF OKLAHOMA and OKLAHOMA SECRETARY OF THE ENVIRONMENT, C. MILES TOLBERT, in his capacity as the TRUSTEE FOR NATURAL RESOURCES FOR THE STATE OF OKLAHOMA PLAINTIFF vs. 1. TYSON FOOD, INC., 2. TYSON POULTRY, INC., 3. TYSON CHICKEN, INC., 4. COBB-VANTRESS, INC., 5. AVIAGEN, INC., 6. CAL-MAINE FOODS, INC., 7. CAL-MAINE FARMS, INC., 8. CARGILL , INC., 9. CARGILL TURKEY PRODUCTION LLC, 10. GEORGE'S, INC. 11. GEORGE'S FARMS, INC. 12. PETERSON FARMS, INC., 13. SIMMONS FOODS, INC., and 14. WILLOW BROOK FOODS, INC. DEFENDANTS TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, GEORGE'S, INC., GEORGE'S FARMS, INC., PETERSON FARMS, INC., SIMMONS FOODS, INC., AND WILLOW BROOK FOODS, INC. THIRD PARTY PLAINTIFFS, vs. CITY OF TAHLEQUAH, et.al. Third Party Defendants	) CV-0329-JOE-SAJ

AMENDED COUNTERCLAIM TO THIRD PARTY COMPLAINT

COMES NOW, Jo Nan Allen, attorney for Third Party Defendant, the City of Watts and files a counter claim as follows:

1. Third Party Defendant, the City of Watts for the Counter Claim, alleges that the Third Party Plaintiffs have created a nuisance, trespassed on the Illinois River and filed a frivolous law suit against the City of Watts.

2. Third Party Plaintiff's have created a nuisance by impairment of the Illinois River in the Watts area. This intentional invasion, unreasonable impairment has hurt the economic growth of the Watts area by impairing use of the river and enjoyment of the river and the surrounding area.

3. Third Party Plaintiff's have caused an unreasonable and substantial danger to the public's health and safety including the river in the Watts vicinity. Such conduct constitutes a nuisance and this ongoing nuisance is both temporary and permanent.

4. Exhibit A demonstrates that Watts since before January of 1998 have had cleaner waste water than the water in the Illinois River and the city of Watts would allege the pollution of the water in the Illinois River is a tragedy to Northeastern area of Oklahoma and the Illinois River watershed.

5. There have been studies that show that since 2000 there was a dramatic increase in bacteria levels in the Illinois River. . These studies concluded that because bacteria levels increased dramatically from the 1996-98 time period and other factors the pattern would be consistent where poultry litter has been historically

applied. Again, this inclusion of the city of Watts as a Third Party Defendant is a nuisance.

6. The Third Party Plaintiff's in spreading liter upon land have trespassed on the scenic river and negligently have caused an impact on the water supply of the Illinois River7. Upon request, the City Clerk of Watts has forwarded all information requested by the Third Party Plaintiffs, and they have filed this frivolous lawsuit that with the information and knowledge that the City of Watts is not contributing to the degrading of the Illinois River or its watershed.

Therefore the City of Watts requests damages for nuisance, trespass and filing a frivolous lawsuit and all attorney fees and costs of defending this lawsuit and all other and further relief as it is just and appropriate.

City of Watts, Third Party Defendant

/s/ Jo Nan Allen
Jo Nan Allen OBA#17563
219 W. Keetoowah
Tahlequah, OK 74464
Phone: (918) 456-8603
Fax: (918) 456-1407
E-Mail: jonanallen@yahoo.com

Dated:February 13, 2006

CERTIFICATE OF SERVICE

I certify that on the 13th day of February, 2006, I mailed a copy of the Answer and Counter claim to the following

W. A. Drew Edmondson
Attorney General
State of Oklahoma

2300 North Lincoln Blvd
Ste 112
Oklahoma City, Ok 73105
Counsel for Plaintiffs

Louis W. Bullock
Miller Keffer and Bullock
222 S. Kenosha
Tulsa, OK 74120-24120-2421
Counsel for Plaintiffs

J. Randall Miller
David P. Page
Richard T. Garren
Sharon K. Weaver
Riggs Abney Neal Turpen Orbison and Lewis
502 West 6th Street
Tulsa, OK 74119-1010
and
Robert Allen Nance
Dorothy Sharon Gentry
Riggs Abney
5801 N. Broadway, Ste 101
Oklahoma City, OK 73118
Counsel for Plaintiffs

Douglas Allen Wilson
Melvin David Riggs
Tulsa, Ok 74101-1710
Counsel for Cal-Maine Farms, Inc. And Cal-Maine Foods, Inc.

C. Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma city, OK 73118,
Counsel for Plaintiffs

Elizabeth C. Ward
Frederick C. Baker
Motley Rice, LLC
28 Bridgeside Blvd.
Mount Pleasant, SC 29464
and William H. Narwold
Motley Rice LLC
20 Church St., 17th Floor
Hartford, Ct 06103
and
Robert E. Sanders
E. Stephen Williams
Young Williams, PA.
P. O. Box 23059
Jackson, MS 39225-3059
Counsel for Cal-Maine Farms, Inc. And Cal Maine Foods, Inc.

John H. Tucker
Theresa Noble Hill
Rhodes, Hieronymus, Jones, Tucker and Gable
P. O. Box 21100
Tulsa, OK 74121-1100
Counsel for Cargill, Inc., and Cargill Turkey Production, LLC

A. Scott McDaniel
Chris A. Paul
Nicole M. Longwell
Philip D. Hixon
Martin A. Brown
Joyce, Paul and McDaniel, P.C.
1717 South BoulderAve., Suite 200
Tulsa, Ok 74119
Counsel for Defendant Peterson Farms, Inc.

Robert P. Redemann
Lawrence W. Zeringue
David C. Senger
Perrine, McGivern, Redemann, Reid, Berry and Taylor, PLLC
P. O. Box 1710

Stephen L. Jantzen
Patrick M. Ryan
Ryan, Whaley and Coldiron, P.C.
119 N. Robinson
900 Robinson Renaissance
Oklahoma City, OK 73102
Counsel for Defendants Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc.

R. Thomas Lay
Kerr, Irvine, Rhodes and Ables

201 Robert S. Kerr Avenue, Ste 600
Oklahoma City, Ok 73102
Counsel for Defendant Willow Brook Foods, Inc.

1501 K. Street NW
Washington, DC 2005
Counsel for Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc. And Cobb-Vantress, Inc.

Randall E. Rose
George Owens
The Owens Law Firm, P.C.
234 West 13th Street
Tulsa, OK 74119
Counsel for Defendant George's Inc. And George's Farms, Inc.

John R. Elrod
Vicki Bronson
Conner and Winters, P.C.
100 West Center Street, Ste 200
Fayetteville, AR 72701

and

Daniel Richard Funk
Bruce Freeman
Conner and Winters, P.C.
15 East 5th Street, Ste 3700
Tulsa, Oklahoma 74103-4344
Counsel for Defendant Simmons Foods, Inc.

Thomas C. Green
Mark D. Hopson
Jay Thomas Jorgensen
Timothy K. Webster
Sidley Austin Brown and Wood LLP

/s/ Jo Nan Allen
Jo Nan Allen OBA#17563
219 W. Keetoowah
Tahlequah, OK 74464
Phone: (918) 456-8603
Fax: (918) 456-1407
E-Mail: jonanallen@yahoo.com

Stilwell
AREA DEVELOPMENT AUTHORITY
4 EAST WALNUT * STILWELL, OK * 74960
FAX (918) 696-4572
PH. (918) 696-5084

January 28, 1998

Gary Fain
Watts Waste Water Dept.
P.O. Box 70
Watts, OK 74964

Re: Explanation of tests performed.

Dear Mr. Fain:

There seems to be some misunderstanding on the bench sheets of lab analysis which was performed on samples (Sx's) collected at both the Watts Lagoon and the Illinois River and were faxed to your department on January 22, 1998. This letter is an attempt to explain that data in a way that will end any misunderstanding.

The following information may be in greater detail than is necessary, however, with me not knowing the expertise in the water and waste water field of your department, I feel it necessary to answer as simply as possible. I apologize in advance if it is in greater detail than needed.

On January 16, 1998, per the request of Mr. Lonnie Walker, Watts employee, Gary Eubanks and I, both certified through DEQ as Operators and Lab Technicians, came to Watts and collected Sx's from the Illinois River and one of the Watts Lagoons. The following information is the results of the tests performed according to the 18th edition of Standard Methods and some explanations of the data.

1. BOD: Biochemical Oxygen Demand is a test required by government agencies to be performed on waste water to determine the amount of oxygen needed to "break-down" the impurities by bacteria in water in a controlled environment and is recorded as milligrams per liter BOD (mg/l), or parts per million BOD (ppm), which basically means the same thing. (One mg/l is equal to one ppm).

EXHIBIT A

The BOD on the River Sx was 3.175 ppm.
Which means that out of a million parts of water only 3.175 parts was BOD.
In other words if we were dealing in dollars, out of $1,000,000 only $ 3.18 is BOD.
This is next to nil.

The BOD in the Watts Lagoon Sx was 3.625 ppm.
Which means that the Watts Lagoon had only 0.45 ppm more than the River.
Again, this is next to nil.

2. TSS: Total Suspended Solids is a test performed to determine the amount of solids, either settleable or in suspension, in water recorded also as mg/l or ppm.

The TSS in the River Sx was 19.87 ppm, while the Watts Lagoon Sx had 8.27 ppm.
In other words the Watts Lagoon had less TSS than did the River Sx.

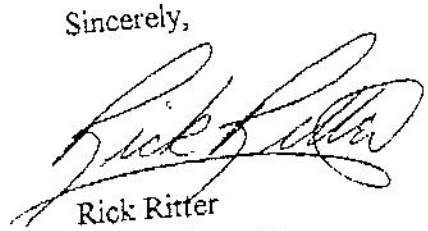
This scenario continues with the other lab analysis performed (except for DO and pH). You can subtract the Watts Lagoon Sx data from the Illinois River Sx data and compare that to a million parts and see that the differences are inconsequential compared to the whole.

3. DO: Dissolved Oxygen is the amount of oxygen contained in the Sx.
The DO in the River Sx was 11.8 ppm while the DO in the Watts Lagoon Sx was 9.9 ppm.
To give you a comparison, most marine life must have at least 4.0 ppm DO to survive.
Both are well above this amount.

4. pH: pH is a measurement of the acidity or alkalinity (base) of water. It is measured in Standard Units (SU's) and has a scale that runs from 0 to 14, with 7.0 being neutral. Anything below 7.0 is on the acidic side and everything above 7.0 is on the alkaline side. A good rule of thumb to remember is that all waters that inhabit marine life should be in the 6.0 to 9.0 range.
Both the River Sx and the Watts Lagoon Sx are well within this range.

I hope this information is helpful to you without being too simple. However, if you need further information, or if I can be of further assistance, please don't hesitate to call.

Sincerely,



Rick Ritter
Plants Manager

Stilwell
AREA DEVELOPMENT AUTHORITY
PH. (918) 696-5084 FAX (918) 696-4572

March 4, 1998

Mr. Gary Fain
Watts Utility Dept.
P.O. Box 70
Watts, OK 74964

Re: Results and explanation of testing done by the Stilwell Area Development Authority's Wastewater Lab.

Dear Mr. Fain:

According to your request, Mr. Lyndon Black and I visited Watts on February 26, 1998. We collected samples for analysis at the Illinois River, the Watts Lagoon, and the Watts Lift Station. Following are the results of the tests done along with some explanations.

1. BOD (Biochemical Oxygen Demand expressed in ppm, parts per million):
Listed below are the BOD test results on the three sample sites, however, we should note that BOD tests should have a minimum depletion of dissolved oxygen of 2.0 ppm. When the strength of the sample is unknown, predetermining the amount to use is hard. The BOD sample on the Illinois River and the Watts Lagoon did not deplete the desired 2.0 ppm. Nevertheless, I believe the information to be accurate enough to decide the differences in the two samples.

Watts Lift Station BOD = 254.5 ppm
Watts Lagoon BOD = 5.13 ppm (removal = 98%)
Illinois River BOD = 2.83 ppm

The Watts Lagoon experienced a 98% removal of BOD as compared with the Lift Station. This is very good. We can easily see only a 2.3 ppm difference between the Illinois River sample and the Watts Lagoon. Westville, Watts' closest neighbor, to my knowledge has a permit through the ODEQ and the EPA to discharge a daily average of 20 ppm BOD. Knowing this, we can easily determine that if Watts' Lagoon should accidentally discharge, the Illinois River would not see a negative environmental impact.

2. TSS (Total Suspended Solids expressed in ppm, parts per million):

Watts Lift Station TSS = 156 ppm
Watts Lagoon TSS = 6 ppm (removal = 96%)
Illinois River TSS = 63 ppm

The Watts Lagoon experienced a 96% removal of TSS as compared with the Lift Station. This also is very good. Please notice that the Watts Lagoon has less TSS than does the Illinois River. According to literature that I have read it is common for lagoons to have less TSS than their receiving streams. It is plain to see that an accidental discharge from the Watts Lagoon would not be detrimental to the Illinois River on TSS.

3. Nitrogen, Ammonia (NH^3):

Watts Lift Station = 32.76 NH^3
Watts Lagoon = 0 NH^3
Illinois River = 0 NH^3

No measurable amount of NH^3 was found in either the Watts Lagoon or the Illinois River. Therefore they would not see any negative impact should an accidental discharge occur.

4. Alkalinity

Watts Lift Station = 310 ppm
Watts Lagoon = 90 ppm
Illinois River = 66 ppm

Since an alkalinity of less than 100 ppm is desirable for waters used for domestic purposes, Watts Lagoon, if accidentally discharged, would not negatively affect the Illinois River.

5. Chlorides

Watts Lift Station = 149 ppm
Watts Lagoon = 52 ppm
Illinois River = 41 ppm

Common levels of chlorides range between 2 ppm and 100 ppm. The Watts Lagoon and the Illinois River both are in this range. Therefore, the Illinois River would not experience a negative environmental impact should the Watts Lagoon accidentally discharge.

6. pH (expressed in SU, standard units)

Watts Lift Station = 8.58 SU
Watts Lagoon = 7.83 SU
Illinois River = 7.62 SU

A pH of 7.00 Standard Units is considered neutral with anything above a pH of 7.00 showing alkalinity. Both the Watts Lagoon and the Illinois River are on the alkaline side. Most natural waters have pH values of between 5.5 and 8.6. Most EPA NPDES permits allow pH ranges from between 6.0 and 9.0 on discharging systems. Again, the Illinois River would not experience a negative environmental impact should the Watts Lagoon accidentally discharge.

7. D.O. (Dissolved Oxygen)

Watts Lift Station = 5.0 ppm
Watts Lagoon = 10.3 ppm
Illinois River = 9.6 ppm

We can plainly see that the D.O. content of the Lagoon is higher than the D.O. content of the Illinois River. This is good. Again, no negative environmental impact.

8. Phosphorous

Watts Lift Station = 3.3 ppm
Watts Lagoon = 0.231 ppm
Illinois River = 0.231 ppm

The Phosphorous content in the Watts Lagoon and the Illinois River were the same. Therefore, the Illinois River would not experience a negative environmental impact should the Watts Lagoon accidentally discharge.

Mr. Lyndon Black, Lab Technician for the Stilwell Area Development Authority, performed all tests according to Standard Methods for The Examination of Water and Wastewater, 18th Edition. They are as accurate as possible. As was stated earlier, the BOD tests for the Watts Lagoon and the Illinois River did not deplete the recommended 2.0 ppm. However, I do not believe that had the samples of BOD depleted the recommended 2.0 ppm that we would have noticed any significant difference compared with the actual. However, should the City of Watts decide that they require additional testing, seeding of samples will be done to ensure a depletion of at least 2.0 ppm.

I hope I have answered any questions that have arisen from the possibility of any contamination of the Illinois River should any accidental discharges of the Watts Lagoon occur.

If I or my department can be of any additional assistance to the City of Watts, please do not hesitate to call.

Sincerely,

Rick Ritter
Plants Manager